

§ 3.403 Standards for determination of appropriate individual minimum capital ratios.

The appropriate minimum capital ratios for an individual national bank or Federal savings association cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

- (a) The conditions or circumstances leading to the OCC's determination that higher minimum capital ratios are appropriate or necessary for the national bank or Federal savings association;
- (b) The exigency of those circumstances or potential problems;
- (c) The overall condition, management strength, and future prospects of the national bank or Federal savings association and, if applicable, its holding company and/or affiliate(s);
- (d) The national bank's or Federal savings association's liquidity, capital, risk asset and other ratios compared to the ratios of its peer group; and
- (e) The views of the national bank's or Federal savings association's directors and senior management.

§ 3.404 Procedures.

(a) *Notice.* When the OCC determines that minimum capital ratios above those set forth in subpart B of this part or other legal authority are necessary or appropriate for a particular national bank or Federal savings association, the OCC will notify the national bank or Federal savings association in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the national bank or Federal savings association.

(b) *Response.* (1) The national bank or Federal savings association may respond to any or all of the items in the notice. The response should include any matters which the national bank or Federal savings association would have the OCC consider in deciding whether individual minimum capital

ratios should be established for the national bank or Federal savings association, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the national bank or Federal savings association received the notice. The OCC may shorten the time period when, in the opinion of the OCC, the condition of the national bank or Federal savings association so requires, provided that the national bank or Federal savings association is informed promptly of the new time period, or with the consent of the national bank or Federal savings association. In its discretion, the OCC may extend the time period for good cause.

(2) Failure to respond within 30 days or such other time period as may be specified by the OCC shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the national bank's or Federal savings association's response period, the OCC will decide, based on a review of the national bank's or Federal savings association's response and other information concerning the national bank or Federal savings association, whether individual minimum capital ratios should be established for the national bank or Federal savings association and, if so, the ratios and the date the requirements will become effective. The national bank or Federal savings association will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the national bank or Federal savings association.

(d) *Submission of plan.* The decision may require the national bank or Federal savings association to develop and submit to the OCC, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the national bank or Federal savings association by the date required.

(e) *Change in circumstances.* If, after the OCC's decision in paragraph (c) of this section, there is a change in the